

ADVICE FROM THE MONITORING OFFICER

1. INTRODUCTION

This appendix sets out in some detail members' responsibilities to set a legal budget and how members should approach the task. It also reminds members about the rules concerning disclosable pecuniary interests.

2. NOTICE

There is a requirement to publish notice of the amount set for Council Tax in at least one local paper within 21 days. There is also a duty to consult with representatives of Non-Domestic Ratepayers about the proposed revenue and capital expenditure before the budget requirement is calculated.

3. MEMBERS' FIDUCIARY DUTIES

The obligation to make a lawful budget each year is shared equally by each individual member. In discharging that obligation, members owe a fiduciary duty to the council tax payer.

The budget must not include expenditure on items which would fall outside the Council's powers. Expenditure on lawful items must be prudent and any forecasts or assumptions such as rates of interest or inflation must themselves be rational. Power to spend money must be exercised in good faith and for the purpose for which they were conferred. A power exercised for an ulterior motive risks a finding of illegality. In determining the Council's overall budget requirement, members are bound to have regard to the level of Council Tax necessary to sustain it.

Within this overall framework, there is considerable scope for discretion. Members will bear in mind that in making the budget, commitments are being entered which will have an impact on future years. Some such commitments are susceptible to change in future years, such as staff numbers which are capable of upward or downward adjustment at any time. Other commitments however impose upon the Council future obligations which are binding and cannot be adjusted, such as loan charges to pay for capital schemes.

Only relevant and lawful factors may be taken into account and irrelevant factors must be ignored. A member who votes in accordance with the decision of his or her political group, but who does so after taking into account the relevant factors and professional advice, will be acting within the law. Party loyalty and party policy are capable of being relevant considerations for the individual member provided the member does not blindly follow the party line without considering the relevant factors and professional advice and without properly exercising any real discretion.

Members should take into account the advice of the Chief Finance Officer (the Strategic Director of Finance and Governance) and the Monitoring Officer (Corporate Director of Governance and Law).

4. ARREARS OF COUNCIL TAX AND VOTING

In accordance with section 106 of the Local Government Finance Act 1992, where **any payment of Council Tax that is payable by a member has been outstanding for two months or more at the time of a meeting**, the member must disclose the fact of their arrears (though they are not required to declare the amount) and cannot vote on any of the following matters if they are the subject of consideration at a meeting:

- (a) Any decision relating to the administration or enforcement of Council Tax.
- (b) Any budget calculation required by the Local Government Finance Act 1992 underlying the setting of the Council Tax.
- (c) Any recommendation, resolution or other decision which might affect the making of the Annual Budget calculation.

Failure to disclose such arrears and / or to participate in a vote on any of the matters in (a) to (c) above is a criminal offence. The disclosure should be made as soon as possible after the start of the meeting.

These offences apply to Council, committee and Executive (Cabinet) committees. Any member who considers that this section may apply to them should seek advice from the Monitoring Officer (Mark Hynes) and / or the Strategic Director of Finance and Governance (John Turnbull) before the meeting and as soon as possible.

5. THE CODE OF CONDUCT

Under the Code of Conduct, a member with a discloseable pecuniary interest in an agenda item must declare the interest and withdraw from the meeting. Discloseable pecuniary interests are set out in the front of this Agenda.

Taking into account all relevant circumstances, the Monitoring Officer has granted dispensation to all councillors to participate in any budget and / or council tax setting meeting by reason of their liability for council tax in the borough.

If any member considers they have **any other** interest to declare under the Code of Conduct (noting the list of disclosable pecuniary interests and non-pecuniary interests set out at the start of the agenda), they should seek advice from the Monitoring Officer.

6. RESPONSIBILITIES OF CHIEF FINANCE OFFICER & MONITORING OFFICER

Section 114 of the Local Government Finance Act 1988 places the Chief Finance Officer (the section 115 Officer) under an obligation to prepare a report to full Council if it appears to him that the expenditure the Authority

proposes to incur in a financial year is likely to exceed its resources available to meet that expenditure.

Similarly, the Council's Monitoring Officer is required to report to full Council under s.5 of the Local Government & Housing Act 1989 if it appears to him that a decision has been or is about to be taken which is or would be unlawful or would be likely to lead to maladministration.

Under section 25 of the Local Government Act 2003, the Chief Finance Officer is now required to report to the Council on the robustness of the estimates made for the purposes of the calculations required to be made by the Council. These are the estimates which the Cabinet is required to determine and submit to Full Council and are contained within this report. However, if the Council were minded to agree a budget based on different estimates e.g. if Council did not agree with the estimates provided by the Cabinet then those estimates which the Council would adopt would effectively become 'the estimates' for the purpose of Section 25 and as such should be subject to a report by the Chief Finance Officer.

7. SPECIFIC BUDGET ADVICE

Increases in Council Tax

The Localism Act 2011 introduced new provisions into the Local Government Finance Act 1992 regarding a requirement on local authorities to hold a referendum if they propose to increase Council Tax above certain levels. The council tax referendum principles are determined by the Secretary of State under section 52ZC of the Finance Act 1992. The Referendums Relating to Council Tax Increases (Principles) (England) Report 2023/24 was approved by the House of Commons on 8th February 2023. For 2023/24, the amount of the relevant basic council tax is 'excessive' if the authority's relevant basic amount of council tax for 2023/24 is 5% (comprising 2% for expenditure on adult social care and 3% for other expenditure).

The Council Tax (Demand Notices) (England) (Amendment) Regulations 2017 amended The Council Tax (Demand Notices) (England) Regulations 2011 to require a narrative statement on the front of the demand notice highlighting any council tax increases attributable to the funding of adult social care, and signposting to further information; and further information about the council tax increase and spending on adult social care to be provided in the *"Information supplied with the demand notice"*.

Balances and Other Budget Calculations

A local authority must budget so as to give a reasonable degree of certainty as to the maintenance of its services. In particular, local authorities are required by section 32 of the Local Government Finance Act 1992 to calculate as part of their overall budget what amounts are appropriate for contingencies and reserves. The Council faces various contingent liabilities set out in the main budget report. Furthermore, the Council must ensure sufficient flexibility

to avoid going into deficit at any point during the financial year. Members will need to pay careful attention to the advice of officers here.

In addition to advising on the robustness of the estimates as set out above, the Strategic Director of Finance is also required to report on the robustness of the proposed financial reserves. The same advice applies to these as to the other calculations required to be made by the Council. The Strategic Director of Finance view of the level of reserves is contained within the report.

Having considered the officer's report the Council is then required to "*have regard to the report*" but it is not required to adopt the recommendations in it. However, members must demonstrate they have acted reasonably if they do not adopt the recommendations.

Capital Programme

The requirements of the "*Prudential Code*" established in the Local Government Act 2003 are set out in the report.

Expenditure Charged to the Housing Revenue Account

Members will be aware that the Housing Revenue Account (HRA) is by law to be maintained separately from the General Fund and there are strict rules which determine to which account any expenditure must be charged. There are only very limited areas of discretion here. Members should bear in mind that if they wished to review any current determination which affects the apportionment of charges between the General Fund and HRA, they would need to do so on the basis of an officers' report and specific legal advice. The Housing Revenue Account must be maintained in balance throughout the year by Section 76 Local Government and Housing Act 1989.